

# SENATE BILL No. 405

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-26.

**Synopsis:** Underground utility facilities. Amends the statute concerning the location and protection of underground utility facilities (facilities) during excavation or demolition activities to provide that mechanized equipment may be used to perform an excavation within two feet of either side of the outer limits of a facility if: (1) the facility is located or contained in or under pavement; or (2) there is pavement on or over the area extending up to two feet from the outer limits of the facility; notwithstanding the prohibition in existing law on using mechanized equipment when the clearance outside the outer limits of a facility is less than two feet. Provides that information concerning the location of a facility provided by the facility's operator must include the approximate: (1) depth below the surface; or (2) elevation; of the facility, as determined using a method or technology approved by the board of directors of the Indiana Underground Plant Protection Service (association). Provides that if an excavator determines that the exact location of a facility cannot be determined: (1) the excavator may submit a request through the association for the facility's operator to provide onsite assistance in locating the facility; and (2) the operator shall, not later than two full working days after the date the request is made, provide at the site of the excavation or demolition the assistance requested. Makes technical changes.

**Effective:** July 1, 2014.

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January 14, 2014, read first time and referred to Committee on Utilities.

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Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# SENATE BILL No. 405



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 8-1-26-3.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2014]: **Sec. 3.5. As used in this chapter, "communications**
- 4 **service" has the meaning set forth in IC 8-1-32.5-3.**
- 5 SECTION 2. IC 8-1-26-9 IS AMENDED TO READ AS FOLLOWS
- 6 [EFFECTIVE JULY 1, 2014]: Sec. 9. As used in this chapter,
- 7 "mechanized equipment" means equipment operated by means of
- 8 mechanical power, including:
- 9 (1) trenchers;
- 10 (2) bulldozers;
- 11 (3) power shovels;
- 12 (4) augers;
- 13 (5) backhoes;
- 14 (6) scrapers;
- 15 (7) drills;
- 16 (8) cable and pipe plows;



1 (9) hydroexcavators; and

2 (10) other equipment that may cause damage to underground  
3 facilities.

4 SECTION 3. IC 8-1-26-17, AS AMENDED BY P.L.62-2009,  
5 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2014]: Sec. 17. (a) An operator that has underground facilities  
7 located in Indiana must be a member of the Indiana Underground Plant  
8 Protection Service or its successor organization. The articles of  
9 incorporation or the bylaws of the Indiana Underground Plant  
10 Protection Service or its successor organization shall do the following:

11 (1) Provide that the board of directors of the Indiana Underground  
12 Plant Protection Service or its successor organization is composed  
13 of:

14 (A) five (5) members representing electric utilities other than  
15 municipal electric utilities, including corporations organized  
16 or operating under IC 8-1-13 or corporations organized under  
17 IC 23-17, some of whose members are local district  
18 corporations (as described in IC 8-1-13-23);

19 (B) five (5) members representing investor owned gas utilities,  
20 including pipelines;

21 (C) five (5) members representing ~~telecommunications~~  
22 **communications service** providers, at least one (1) of whom  
23 is a provider of cable television service;

24 (D) five (5) members representing water or sewer utilities  
25 other than municipal water or sewer utilities; and

26 (E) five (5) members representing political subdivisions,  
27 including municipal utilities, which must include ~~the political~~  
28 ~~subdivision that owns a member representing~~ the largest  
29 waterworks utility in Indiana **that is owned by:**

30 **(i) a political subdivision; or**

31 **(ii) a department of public utilities created by**  
32 **IC 8-1-11.1.**

33 (2) Require the affirmative vote of at least sixty percent (60%) of  
34 each category of members appointed under subdivision (1) to  
35 approve an increase, a decrease, or any other adjustment to the  
36 membership dues, rates, tariffs, locate fees, or any other charges  
37 imposed by the Indiana Underground Plant Protection Service or  
38 its successor organization.

39 (b) The association shall provide for mutual receipt of notice of  
40 excavation or demolition operations under section 16 of this chapter.

41 (c) The association shall:

42 (1) annually update the association's base map data, including



1 street addresses; and

2 (2) make reasonable efforts to reduce incorrect locate requests  
3 issued to the association's members.

4 (d) The association shall develop and implement guidelines to  
5 provide that, for purposes of providing notice to an operator under  
6 section 16 of this chapter, the time of receipt of a notice of an intent to  
7 excavate or demolish is determined as follows:

8 (1) For a notice that is received between the hours of 7 a.m. and  
9 6 p.m. on a working day, at the time of receipt.

10 (2) For a notice that is received after 6 p.m. on a working day and  
11 before 7 a.m. on the following working day, at 7 a.m. on the  
12 following working day.

13 SECTION 4. IC 8-1-26-18, AS AMENDED BY P.L.62-2009,  
14 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2014]: Sec. 18. (a) **Subject to subsection (i)**, each operator  
16 notified under section 16 of this chapter shall, **in not later than** two (2)  
17 full working days after receiving the notice of intent provided in  
18 section 16 of this chapter, supply to the person responsible for the  
19 excavation or demolition the following information, using maps when  
20 appropriate:

21 (1) The approximate location and a description of all the  
22 operator's underground facilities that may be damaged as a result  
23 of the excavation or demolition. **Information provided under  
24 this subdivision concerning the location of an underground  
25 facility must include the approximate:**

26 **(A) depth below the surface; or**

27 **(B) elevation;**

28 **of the underground facility, as determined using a method or  
29 technology approved by the board of directors of the  
30 association.**

31 (2) The location and description of all facility markers indicating  
32 the approximate location of the underground facilities.

33 (3) Any other information that would assist that person in locating  
34 and avoiding damage to the underground facilities, including  
35 providing adequate temporary markings indicating the  
36 approximate location of the underground facility and locations  
37 where permanent facility markers do not exist.

38 (b) Facility locate markings must consist of paint, flags, or stakes or  
39 any combination that mark the approximate location of the  
40 underground facilities. The method of marking must be appropriate for  
41 the location of the underground facilities.

42 (c) Color coding of facility locate markings indicating the type of



- 1 underground facility must conform to the following color coding:  
 2 Facility and Type of Product Specific Group  
 3 Identifying Color  
 4 (1) Electric power distribution  
 5 and transmission ..... Safety red  
 6 (2) Municipal electric systems ..... Safety red  
 7 (3) Gas distribution and  
 8 transmission ..... High visibility  
 9 safety yellow  
 10 (4) Oil distribution and  
 11 transmission ..... High visibility  
 12 safety yellow  
 13 (5) Dangerous materials, product  
 14 lines, steam lines ..... High visibility  
 15 safety yellow  
 16 (6) ~~Telephone and telegraph~~ **Communications service**  
 17 systems ..... Safety alert  
 18 orange  
 19 (7) Cable television ..... Safety alert  
 20 orange  
 21 (8) Police and fire  
 22 communications ..... Safety alert  
 23 orange  
 24 (9) Water systems ..... Safety precaution  
 25 blue  
 26 (10) Sewer systems ..... Safety green  
 27 (11) Proposed excavation ..... White  
 28 (d) Each operator notified under section 16 of this chapter shall,  
 29 ~~within not later than~~ two (2) full working days ~~of~~ **after** receiving the  
 30 notice of intent provided in section 16 of this chapter, make a  
 31 reasonable attempt to provide notification to the person responsible for  
 32 the excavation or demolition if the operator has no facilities in the  
 33 location of the proposed excavation or demolition.  
 34 (e) This section does not apply to an operator making an emergency  
 35 repair to its own underground facility.  
 36 (f) This subsection applies if all of the following occur:  
 37 (1) An operator of a pipeline facility is required to supply  
 38 information, including facility locate markings, under subsection  
 39 (a) to a person responsible for an excavation or demolition.  
 40 (2) The operator of the pipeline facility fails to supply the  
 41 information described in subdivision (1) or provides incorrect  
 42 facility locate markings.



1 (3) The operator's pipeline facility is damaged during the  
 2 excavation or demolition for which the operator was required to  
 3 supply the information described in subdivision (1).

4 The operator of the pipeline facility may be subject to a civil penalty in  
 5 an amount recommended by the advisory committee and approved by  
 6 the commission, not to exceed one thousand dollars (\$1,000).

7 (g) Subsection (f) does not apply to an operator that:

8 (1) is repairing its own underground facilities; or

9 (2) fails to supply required information or provide facility locate  
 10 markings due to factors beyond the control of the operator.

11 (h) A person that knowingly moves, removes, damages, or otherwise  
 12 alters a facility locate marking supplied under this section may be  
 13 subject to a civil penalty in an amount recommended by the advisory  
 14 committee and approved by the commission, not to exceed ten  
 15 thousand dollars (\$10,000). This subsection does not apply to a person  
 16 that moves, removes, damages, or otherwise alters a facility locate  
 17 marking as part of the excavation or demolition for which the facility  
 18 locate markings were supplied.

19 **(i) If, after receiving the information required under subsection**  
 20 **(a), the person responsible for the excavation or demolition**  
 21 **determines that the exact location of an underground facility**  
 22 **cannot be determined, the person responsible for the excavation or**  
 23 **demolition may request the operator of the facility to provide**  
 24 **onsite assistance in locating the underground facility. A person**  
 25 **that:**

26 **(1) is responsible for the excavation or demolition; and**

27 **(2) makes a request under this subsection;**

28 **shall submit the request to the association in accordance with**  
 29 **section 16 of this chapter. Upon receiving notification of the**  
 30 **request from the association, the operator shall, not later than two**  
 31 **(2) full working days after the date the request is made (as**  
 32 **determined in the manner specified in section 17(d) of this**  
 33 **chapter), provide at the site of the excavation or demolition the**  
 34 **assistance requested.**

35 SECTION 5. IC 8-1-26-20, AS AMENDED BY P.L.62-2009,  
 36 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 37 JULY 1, 2014]: Sec. 20. (a) In addition to the notice required in section  
 38 16 of this chapter, a person responsible for an excavation or demolition  
 39 operation under section 14 of this chapter shall do all of the following:

40 (1) Plan the excavation or demolition to avoid damage to or  
 41 minimize interference with underground facilities in and near the  
 42 construction area.



1 (2) Maintain a clearance between an underground facility, as  
 2 marked by the operator, and the cutting edge or point of  
 3 mechanized equipment. The clearance must be not less than two  
 4 (2) feet on either side of the outer limits of the physical plant.  
 5 However, if the clearance is less than two (2) feet, exposure of the  
 6 underground facility may be accomplished **as follows:**

7 (A) Only by the use of:

8 (i) hand excavation;

9 (ii) air cutting; **or**

10 (iii) vacuum excavation; **or**

11 (iv) **notwithstanding section 9(9) of this chapter,**  
 12 **hydroexcavators;**

13 **if the underground facility is not located or contained in or**  
 14 **under pavement, or if there is no pavement on or over the**  
 15 **area extending up to two (2) feet from the outer edge of**  
 16 **either side of the underground facility.**

17 (B) By use of:

18 (i) **any of the methods described in clause (A); or**

19 (ii) **subject to the person's duty under subdivision (1),**  
 20 **mechanized equipment;**

21 **if the underground facility is located or contained in or**  
 22 **under pavement, or if there is pavement on or over the**  
 23 **area extending up to two (2) feet from the outer edge of**  
 24 **either side of the underground facility.**

25 (3) Notify the association if:

26 (A) there is evidence of an unmarked pipeline facility in the  
 27 area of the excavation or demolition; or

28 (B) the markings indicating the location of an underground  
 29 facility have become illegible.

30 (b) A person who:

31 (1) violates subsection (a); and

32 (2) causes damage to a pipeline facility in the area of the  
 33 excavation or demolition;

34 may be subject to a civil penalty in an amount recommended by the  
 35 advisory committee and approved by the commission, not to exceed ten  
 36 thousand dollars (\$10,000).

